

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARBARA O. SAUER

Appeal 2006-2014
Application 09/745,006
Technology Center 3700

Decided: April 23, 2007

Before BRADLEY R. GARRIS, CHUNG K. PAK and
LINDA M. GAUDETTE, *Administrative Patent Judges*.
GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals the final rejection of claims 2-7 and 9-18 under 35 U.S.C. § 134. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

INTRODUCTION

Appellant invented a disposable absorbent article and a method for producing a disposable absorbent article (Specification 4, claims 3 and 15).

As shown in Appellant's Figure 1, the absorbent article includes a material formed as a single piece having two enlarged end portions (11, 12) and a narrowed portion (13) intermediate the two enlarged end portions (11, 12) (Specification 9). The absorbent article includes a fluid impermeable backsheet or outer cover 21, a fluid permeable body-side liner (15) and a flap sheet or pocket sheet (24) attached to the body-side liner (Figure 2; Specification 10). The flap sheet or pocket sheet has pleats (22) along opposed sides of the flap sheet (24) to permit the pocket formed by the flap sheet to expand and collect fecal matter (Figure 2, Specification 11). The method for producing a disposable diaper comprises forming a substantially rectangular multi-layer material comprising a fluid impermeable backsheet, a body-side liner, and a flap sheet attached to the body-side liner proximate the back region of the absorbent article (Specification 12, claim 15). The method further comprises removing a portion of the material from opposed longitudinal edges to form two enlarged end portions (11, 12) and a narrowed intermediate portion (13) (Specification 12, Figure 1). Discrete pleats (22) are formed in the flap sheet (24) on opposed sides of the pocket extending parallel to the longitudinal axis of the absorbent article (Specification 12, claim 15, Figures 1 and 2).

Claims 3¹ and 15 are illustrative:

3. An absorbent article comprising:

¹ The claims and Specification may fail to satisfy the enablement requirement of 35 U.S.C. § 112, first paragraph, because the disclosure does not describe how the pocket formed by the flap or pocket sheet permits ingress of fecal matter. The Examiner and Appellant should address this matter in any further prosecution of this application.

an elongated material having two enlarged end portions and a narrowed portion intermediate said two enlarged end portions, one of said two enlarged end portions corresponding to a back region of said absorbent article; and

said elongated material comprising a fluid impermeable backsheet, a fluid permeable body-side liner attached to one side of said fluid impermeable backsheet, and a separate flap sheet attached directly to said fluid permeable body-side liner by point bonding at opposed peripheral edges of the flap sheet and at an edge of the flap sheet disposed toward the back region of said absorbent article, said flap sheet including two opposed pleats and being expandable in a direction away from said fluid impermeable backsheet proximate said back region of said absorbent article, whereby the pleats define a pocket between the flap sheet and the body-side liner for collection of fecal matter;

wherein the two opposed pleats are disposed substantially parallel to a longitudinal centerline of said elongated material.

15. A method for producing a disposable absorbent article comprising the steps of:

forming a substantially rectangular multi-layer material comprising a fluid impermeable backsheet, a fluid permeable body-side liner attached to one side of said fluid impermeable backsheet, and a flap sheet attached directly to said fluid permeable body-side liner whereby said body-side liner is disposed between said fluid impermeable backsheet and said flap sheet;

removing a portion of said material from opposed longitudinal edges of said substantially rectangular multi-layer material, producing two enlarged end portions and a narrowed portion intermediate said two enlarged end portions, one of said enlarged end portions corresponding to a back region of said disposable absorbent article; and

forming at least two discrete longitudinal pleats along opposed sides of said flap sheet, the longitudinal pleats defining peripheral sides of a

pocket between said flap sheet and said body-side liner, wherein said flap sheet is proximate said back region of said disposable absorbent article.

The Examiner relies on the following prior art references as evidence of unpatentability:

Schaar	US 3,951,150	Apr. 20, 1976
Foreman	US 4,738,677	Apr. 19, 1988
Igaue	US 5,114,420	May 19, 1992
Tanzer	WO 97/39710	Oct. 30, 1997
Sauer	WO 97/48359	Dec. 24, 1997

The rejections as presented by the Examiner are as follows:

1. Claims 2-7, 9-14, and 18 are rejected under 35 U.S.C. § 102(b) as being unpatentable over Tanzer.
2. Claims 2-7, 9-14, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schaar in view of Sauer, Igaue, and Foreman.
3. Claims 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanzer in view of Igaue.

Rather than reiterate the respective positions advocated by the Appellant and by the Examiner concerning this rejection, we refer to the Brief and to the Answer respectively for a complete exposition thereof.

Appellant separately argues claims 3, 9, 15, and 18. Accordingly, we address Appellant's arguments regarding those claims in our opinion below.

OPINION

35 USC § 102(b) REJECTION OVER TANZER

In the Examiner's § 102(b) rejection of claims 3, 9, and 18, the Examiner finds that Tanzer's "envelope web" wrapped around the absorbent assembly 52 constitutes a "body-side liner" as claimed to which is attached a liquid control assembly 102 that includes a pleated bodyside layer 54 (Answer 3-4, Tanzer's Figure 12). Tanzer discloses that the "envelope web" includes a "separate bodyside wrap layer . . . which extends past all or some of the peripheral edges of [the] absorbent portion [52]" (Tanzer 35, ll. 2-16, the "envelope web" is not shown in Tanzer's figures), According to the Examiner, the pleated liquid control assembly 102 corresponds to Appellant's "flap sheet" or "pocket sheet" (Answer 4).

Appellant's only argued distinctions are that Tanzer does not disclose the following features of claims 3, 9, and 18: (1) a separate flap or pocket sheet attached directly to the body-side liner, (2) a flap or pocket sheet attached at peripheral edges to a fluid permeable body-side liner, and (3) a pocket between the flap or pocket sheet and the body-side liner (Br. 6).

In support of these argued distinctions, Appellant argues that Tanzer's "envelope web" does not correspond to the claimed "body-side liner" (Br. 6). Rather, Appellant contends that the claimed "body-side liner" should be construed as corresponding to Tanzer's "bodyside layer" 54 because the plain meaning of "body-side liner" is "an outer lining that is disposed between the absorbent core and the article user, and which contacts the skin of the article user" (Br. 7). Based on Appellant's construction and definition of the claim term "body-side liner," she determines that, as shown in Tanzer's Figure 12, the "bodyside layer" 54 is itself pleated and functions as a flap sheet such that Tanzer fails to disclose ". . . a separate

pleated sheet structure that is attached to the body-side liner to provide a pocket for collection of fecal matter” as claimed (Br. 7).

Appellant further contends that the peripheral edges of Tanzer’s “pleated layer 54 . . . [are] attached to fluid impermeable lateral panels 120” not to a fluid permeable body-side liner as required by the claims (Br. 9). Additionally, Appellant contends that since Tanzer’s “envelope web” cannot correspond to the claimed “body-side liner,” Tanzer cannot disclose forming a pocket between the flap sheet or pocket sheet (i.e., liquid control assembly 102) and the body-side liner as required by the claims (Br. 9-10).

For the reasons discussed below, we are unpersuaded by Appellant’s arguments.

We begin our discussion by construing the claim term “fluid permeable body-side liner.” Appellant has not provided a definition of “fluid permeable body-side liner” in the Specification, so the Examiner’s construction is not governed by any such definition. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005). The Examiner provides a definition of “fluid permeable body-side liner”: a layer in an absorbent article that is “fluid permeable and more bodyside than [other structures] and [that] lines other structures” in the absorbent article (Answer 7).

Appellant contends that one of skill in the art would understand “body-side liner” to mean “an outer lining that is disposed between the absorbent core and the article user, and which contacts the skin of the article user” (Br. 7). Appellant cites to page 1, lines 11-14 of Tanzer’s disclosure to support this contention (Br. 7). However, Tanzer merely describes a diaper “typically” has a bodyside liner, a liquid impervious backsheet and an

absorbent material. Tanzer does not state that the bodyside liner is in contact with the user as Appellant contends.

Moreover, when discussing the envelope web that surrounds the absorbent assembly 52, Appellant states that the terms “‘bodyside’ and ‘outside’ in reference to the wrap layers identify to one skilled in the art the orientation of the wrap layers within the absorbent article structure” (Br. 8). We note that Appellant uses similar language when referring to the structure of absorbent article of her invention (i.e., “outer cover 21” and “body-side liner 15” (Specification 10)). Therefore, Appellant’s statement supports the Examiner’s construction of the term “body-side” in the claim phrase “fluid impermeable body-side liner” as indicating the position of the layer (i.e., liner) relative to other layers in the absorbent article, rather than indicating that the “body-side liner” is in contact with the user.

Additionally, Appellant’s own disclosure undermines the argument that the claim term “body-side liner” must be construed as the layer of material in contact with the user (Br. 7). As Appellant’s Figures 1, 2, and 3, show, the body-side liner 15 is underneath the flap sheet or pocket sheet 24. The portion of the “body-side liner 15” that is underneath the flap sheet or pocket sheet is nonetheless called a “body-side liner” by Appellant even though it does not contact the user. Appellant’s showing in Figures 1, 2, and 3 thus contradicts Appellant’s position.

For the foregoing reasons, we determine the Examiner’s construction and definition of “fluid permeable body-side liner” is reasonable and consistent with Appellant’s Specification. *Phillips*, 415 F.3d at 1316, 75 USPQ2d at 1329. Accordingly, we adopt the Examiner’s construction of “fluid permeable body-side liner” indicated above as our own.

Applying the claim construction of “fluid permeable body-side liner” to Tanzer’s disclosed “envelope web,” we find that Appellant’s “fluid permeable body-side liner” reasonably corresponds to Tanzer’s “envelope web.” Tanzer’s “envelope web” is hydrophilic and would have to be fluid permeable or else no liquid would be absorbed by the absorbent assembly 52 the envelope web surrounds (Tanzer 35, ll. 2-3). Moreover, it is positioned “more body-side than [other structures in the absorbent article]” (Answer 7) and lines the liquid impermeable layer 50 (Figure 12, the “envelope web” would surround the absorbent assembly 52 and extend past the peripheral edges of the absorbent assembly 52) (Tanzer 35, ll. 1-2, 7-9), thus satisfying the Examiner’s construction of “fluid impermeable body-side liner.”

Regarding Appellant’s first and second argued distinctions, based on the foregoing construction of “fluid permeable body-side liner,” Appellant’s “flap sheet” or “pocket sheet” is construed as corresponding to bodyside layer 54 that is part of liquid control assembly 102. The bodyside layer 54 (i.e., flap or pocket sheet) is separate from (i.e., spaced from) envelope web (i.e., fluid permeable body-side liner) thus satisfying the claim feature. The bodyside layer 54 (i.e., flap or pocket sheet) is bonded at the peripheral edges to the underlying envelope layer that extends past the peripheral edges of the absorbent assembly 52 using adhesives, for example (Tanzer 35, ll. 4-9; Figure 12). Tanzer discloses that barrier layer 122 is optional so it may be omitted from the diaper (Tanzer 24, ll. 32-33). Hence, Tanzer’s bodyside layer 54 (i.e., flap sheet or pocket sheet) is attached at peripheral edges directly to envelope web (i.e., fluid permeable body-side liner) (Tanzer Figure 12). For these reasons, Appellant’s first and second argued distinctions are satisfied by Tanzer’s disclosure.

Regarding Appellant's third argued distinction, Tanzer's Figure 12 shows that bodyside layer 54 (i.e., flap or pocket sheet) is spaced from the envelope web (i.e., fluid permeable body-side layer) that surrounds absorbent assembly 52 to form a pocket. Therefore, Tanzer satisfies Appellant's third argued distinction.

From the foregoing, Tanzer satisfies all three of Appellant's argued distinctions. Accordingly, we sustain the Examiner's § 102(b) rejection of argued claims 3, 9, 18 and non-argued claims 2, 4-7, and 10-14.

35 USC § 103(a) REJECTION OVER TANZER IN VIEW OF IGAUE

Appellant's only argued distinction with regard to the § 103(a) rejection over Tanzer in view of Igaue is that neither Tanzer nor Igaue disclose "a pleated flap sheet directly attached to the body-side liner" (Br. 14-15).

This is the same distinction argued above regarding the § 102(b) rejection over Tanzer. As discussed above, Tanzer discloses such a claim feature. Accordingly, we sustain the Examiner's § 103(a) rejection of argued claim 15 and non-argued claims 16 and 17 over Tanzer in view of Igaue.

35 USC § 103(a) REJECTION OVER SCHAAR IN VIEW OF SAUER, IGAUE AND FOREMAN

Appellant argues that Schaar, Igaue, Sauer or Foreman do not disclose pleats that define a pocket for collection of fecal matter (Br. 11). With regard to Schaar, Appellant argues that Schaar's flap 48 has peripheral pleats when in a storage position, however, when in a use position as shown in

Figure 8, Schaar discloses at column 5, lines 9-24 that “the pleats of the end of the diaper have been ‘completely unfolded’” (Br. 11).

We cannot sustain the Examiner’s § 103(a) rejection over Schaar in view of Sauer, Igaue, and Foreman of claims 2-7, 9-14, and 18.

Appellant’s claim feature, “. . . pleats define a pocket between the flap sheet and the body-side liner for the collection of fecal matter . . .” is neither disclosed nor suggested by Schaar, Igaue, Foreman, and Sauer. Schaar uses pleats that disappear upon full expansion of the diaper for placement on the user (Schaar Figure 8, col. 5, ll. 9-24). Foreman discloses a diaper using separate flaps to form longitudinally extending side flaps, not a “pocket” having “pleats” for retaining fecal matter (Foreman, col. 3, ll. 45-63). Igaue discloses a diaper having side flaps that form a pocket but does not disclose the pocket having “pleats” (Igaue, col. 3, ll. 44-47). Sauer disclose a waist flap 60 but does not disclose a pocket having pleats (Sauer, 13, ll. 5-10).

Moreover, there would be no suggestion or motivation for combining Schaar’s pleats with either Foreman’s flap, Igaue’s flap or Sauer’s waist flap because Schaar discloses that pleats are removed when the diaper is fully expanded for placement on the user (Schaar, Figure 8, col. 5, ll. 9-24).

Because none of the references cited by the Examiner teach or suggest the above claim feature, the Examiner has failed to establish a prima facie case of obviousness. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 984-85 180 USPQ 580, 582-83 (CCPA 1974).

Accordingly, we reverse the Examiner’s § 103(a) rejection of claims 2-7, 9-14, and 18 over Schaar in view of Sauer, Igaue, and Foreman.

DECISION

The Examiner's rejections of claims 2-7, 9-14, and 18 under § 102(b) over Tanzer is AFFIRMED.

The Examiner's rejection of claims 15-17 under § 103(a) over Tanzer in view of Igaue is AFFIRMED.

The Examiner's rejection of claims 2-7, 9-14, and 18 under § 103(a) over Schaar in view of Sauer, Igaue, and Foreman is REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED

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